Filed 6/6/07 Lopez v. Phillipsen CA4/2

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

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| MARIO E. LOPEZ,<br>Plaintiff and Appellant,<br>v.<br>JUDY PHILLIPSEN,<br>Defendant and Respondent. | E041358<br>(Super.Ct.No. INC 030753)<br>OPINION |

APPEAL from the Superior Court of Riverside County. Douglas P. Miller, Judge. Reversed.

Nick A. Alden for Plaintiff and Appellant.

John L. Palmer for Defendant and Respondent.

Introduction

Plaintiff Mario E. Lopez appeals from the trial court's order granting defendant Judy Phillipsen's motion to enforce a settlement agreement regarding their dispute over the ownership of real property in Palm Desert. The settlement agreement provided that

Lopez would obtain title to the property after fulfilling various conditions, including paying off all liens and encumbrances. After executing the agreement, the parties discovered that the Franchise Tax Board had filed a lien against the property for Phillipsen's personal tax debt of $12,782.77. When Lopez refused to pay the tax lien and thereby failed to close escrow within the allotted time provided under the agreement, Phillipsen filed an action to enforce the agreement, which would have extinguished any claim Lopez had in the property.

On appeal, Lopez claims that the trial court erred in granting Phillipsen's motion under Code of Civil Procedure section 664.6. He specifically argues that he was the de facto owner of the property and the agreement was unenforceable because there was a lack of mutuality of consent or a mistake of fact. While we cannot make a determination as to whether Lopez was the de facto owner of the property, we agree with Lopez's argument that the settlement agreement was void because of a unilateral mistake of fact.

## Factual and Procedural History

Phillipsen purchased the real property located on 74440 Goleta Avenue, Palm Desert, California. Phillipsen and Lopez orally agreed that Lopez would take possession of the property and pay the mortgage and the property taxes and insurance. For the original purchase, Phillipsen provided the down payment and Lopez paid the closing costs. According to their oral agreement, Phillipsen would transfer title to Lopez after Lopez reimbursed Phillipsen for the $15,000 down payment.

When Lopez sought to obtain title to the property in July of 2002, Phillipsen refused to honor their agreement. Phillipsen had transferred her interest in the property to

a subsequent purchaser. Phillipsen, or her successor in interest, posted a notice of termination of tenancy and commenced an action against Lopez for unlawful detainer.

On August 15, 2002, Lopez filed a complaint to establish a resulting trust, impose a constructive trust, recover damages for breach of contract, fraud, and conspiracy to commit fraud, and obtain declaratory relief.

At the settlement conference on October 8, 2004, the parties agreed that Phillipsen would convey the property to Lopez and that Lopez would secure financing to pay off all existing encumbrances, including the first deed of trust and all property tax liens. Lopez also agreed to pay Phillipsen $45,000. The settlement agreement specifically provided that Lopez would be purchasing the property "AS IS" and, therefore, with all liens and encumbrances of record. Under the agreement, Lopez had 60 days to close escrow or, otherwise, he would be responsible for $1,100 in rent and Phillipsen would be entitled to possession. Lopez signed the agreement on October 14, 2004. The court issued a judgment pursuant to the parties' settlement.

A day earlier, on October 13, 2004, Chicago Title Company filed with the county clerk the preliminary title report, which listed the liens and encumbrances on the property. The report included a personal tax lien filed on February 18, 2004, by the Franchise Tax Board against Phillipsen in the amount of $12,782.77. Although Lopez agreed to pay off all existing liens and encumbrances, he refused to pay the tax lien because Phillipsen had failed to disclose it prior to the execution of the settlement agreement.

On March 16, 2005, Phillipsen filed a motion to enforce the settlement under Code of Civil Procedure section 664.6. In her motion to enforce the settlement, Phillipsen admitted that, although she was aware of her dispute with the Franchise Tax Board over her tax liability, she did not have actual knowledge of the tax lien until November 12, 2004. Phillipsen contended that Lopez was responsible for the lien under the settlement agreement. Because Lopez failed to close escrow within 60 days as required under the agreement, Phillipsen sought to enforce her rights to possession and ownership of the property.

At the hearing on Phillipsen's motion, neither Lopez nor his attorney were present. The court granted Phillipsen's motion and issued a writ of possession.

On August 22, 2005, Lopez filed a motion to vacate and set aside the court's order enforcing the settlement agreement. The court granted the motion and ordered Phillipsen to file another motion to enforce the settlement.

Phillipsen filed the motion on January 18, 2006. After considering the parties papers and hearing argument, the court granted Phillipsen's motion. The court also ordered Lopez to pay Phillipsen $5,500 for rent for the months of December 2004 through April 2005.

## Discussion

Code of Civil Procedure section 664.6 authorizes the court to enter judgment pursuant to the terms of the parties' settlement agreement. When ruling on a motion under this provision, the trial court may receive evidence, resolve the disputed facts, identify the terms of the agreement, and determine whether the parties entered into a

valid and binding agreement. (*Terry v. Conlan* (2005) 131 Cal.App.4th 1445, 1454; *Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 810.)

The same provision authorizes a summary procedure, as opposed to a lawsuit for breach of contract, to enforce the settlement when certain requirements are satisfied. (*Weddington Productions, Inc. v. Flick, supra,* 60 Cal.App.4th at p. 809; see also *Harris v. Rudin, Richman & Appel* (1999) 74 Cal.App.4th 299, 304.) The trial court again resolves any factual disputes, including whether the parties entered into a valid and binding settlement agreement. (*Smith v. Golden Eagle Ins. Co.* (1999) 69 Cal.App.4th 1371, 1375; *In re Marriage of Hasso* (1991) 229 Cal.App.3d 1174, 1180.) When the trial court sits as a trier of fact and resolves factual disputes, its decision must be upheld if supported by substantial evidence. (*Terry v. Conlan, supra,* 131 Cal.App.4th at p. 1454; *In re Marriage of Hasso, supra*, at p. 1180.) When the trial court decides questions of law, however, its decision is not entitled to deference. Questions of law, including the construction and application of statutes, are subject to independent review on appeal. (*Burckhard v. Del Monte Corp.* (1996) 48 Cal.App.4th 1912, 1916.)

A. <u>De Facto Owner</u>

Lopez argues that the settlement agreement established that Phillipsen paid the down payment and purchased the property for him, thereby creating a resulting trust in his favor. (See Civ. Code, § 853; *Johnson v. Johnson* (1987) 192 Cal.App.3d 551, 555-556.) Lopez, therefore, claims that he was the de facto owner of the property.

The parties, however, did not agree on the question of who was the rightful owner of the property. This question also was not resolved by the court. The court simply

accepted the recitals in the settlement agreement. The recitals included the following factual summary: "In April 2000 Defendant Judy Phillipsen purchased the real property located at 74440 Goleta Avenue, Palm Desert (hereinafter subject property), from HUD. Thereafter, Plaintiff and Defendant[] Phillipson [*sic*] entered into an oral agreement whereby Defendant[] Phillipson [*sic*] would sell the subject property to Plaintiff. The essential terms of the oral agreement was that Plaintiff would take possession of the subject property, pay the monthly mortgage payments to Los Angeles Fireman's Credit Union, and pay all property taxes and insurance. Additionally, it was agreed that Plaintiff would pay $15,000.00 to Defendant[] Phillipsen, to reimburse her for the down payment she paid for the purchase of the subject property."

This summary does not state that Phillipsen purchased the property on Lopez's behalf. In fact, the term "thereafter" implies that the parties entered into the agreement after Phillipsen purchased the property. Although there also is evidence in the record to suggest that the parties made an oral agreement before the purchase (i.e., Lopez's payment of the closing costs and immediate possession), the settlement agreement does not resolve this disputed fact.

Phillipsen does not concede that she purchased the property for Lopez. Phillipsen instead contends that she purchased the property for her own benefit and points to the fact that only her name appears on the title and the mortgage.

This was one of the very points of contention. It appears that the parties agreed to the new arrangement because they could not agree as to who was the rightful owner. At minimum, the recitals in the settlement did not establish that the parties had reached an

agreement on this point. As explicitly stated, the settlement was "a compromise of disputed claims between the parties."

The trial court did not make a specific finding as to whether Lopez was or was not the de facto owner of the property and, therefore, this court has no finding to review. And it generally is not the province of this court to make new factual findings.

B. Mistake of Fact

Lopez claims the trial court erred in granting Phillipsen's motion because there was no valid agreement between the parties. Lopez specifically argues that, because Phillipsen failed to disclose the tax lien, the parties did not agree to hold Lopez responsible for the tax lien.

Settlement agreements are contracts and the legal principles that apply to contracts also apply to settlement agreements. (*Weddington Productions, Inc. v. Flick, supra,* 60 Cal.App.4th at p. 810.) One of the essential elements of a contract is mutual consent. (Civ. Code, §§ 1565, 1580; *Weddington Productions, supra,* at p. 811.) There is no mutual consent where the parties are mistaken about the agreement. "'Consent is not mutual, unless the parties all agree upon the same thing in the same sense.' (Civ. Code, § 1580.) 'If both parties are mistaken, and neither is at fault or both are equally to blame, the mistake may prevent formation of the contract.' [Citation.]" (*Balistreri v. Nevada Livestock Production Credit Assn.* (1989) 214 Cal.App.3d 635, 641-642.)

A mistake of fact has been defined as either "[a]n unconscious ignorance or forgetfulness of a fact past or present, material to the contract" or "[b]elief in the present existence of a thing material to the contract, which does not exist, or in the past existence

of such a thing, which has not existed." (Civ. Code, § 1577; see *Stermer v. Board of Dental Examiners* (2002) 95 Cal.App.4th 128, 133.) A mistake of fact need not be mutual in order to justify rescission. (See *Conservatorship of O'Connor* (1996) 48 Cal.App.4th 1076, 1097.)

To rescind a contract for mutual or unilateral mistake of fact, a party must give prompt notice to the other party of his election to rescind the contract and restore or offer to restore everything of value which he had received under the contract. (Civ. Code, § 1691.) The party seeking to rescind the contract also must show that the mistake was material to the contract and the mistake was not caused by the neglect of a legal duty. (Civ. Code, § 1577; see also *M. F. Kemper Const. Co. v. City of L. A.* (1951) 37 Cal.2d 696, 701; *White v. Berrenda Mesa Water Dist.* (1970) 7 Cal.App.3d 894, 900-901.)

Specifically, where the mistake was unilateral, the party seeking to rescind the contract may show that the other party knew of the mistake or caused the mistake. Alternatively, the party may show the following facts: (1) the mistake was regarding his basic assumption in making the contract; (2) the mistake had a material affect on the agreed exchange of performances adverse to him; (3) the party did not bear the risk of the mistake; and (4) that it would be unconscionable to enforce the contract. (See *Donovan v. RRL Corp*. (2001) 26 Cal.4th 261, 282.)

As to the preliminary requirements, Phillipsen argues that Lopez waived his right to seek rescission because he failed to give prompt notice as required under Civil Code section 1691. On the other elements listed above, Phillipsen argues that Lopez failed to establish that the mistake concerned a basic assumption of the contract and that Lopez

assumed the risk of the mistake by agreeing to pay all known and unknown liens and encumbrances. Phillipsen also maintains that she did not conceal the tax lien or fail to disclose it.

We find Phillipsen's waiver argument to be without merit. In response to Phillipsen's other arguments, we conclude that, while Lopez agreed to bear the risk of all unknown liens and encumbrances, he did not agree to pay Phillipsen's personal tax lien, of which Phillipsen should have known, but failed to disclose. These conclusions are based on the reasons discussed below.

1. Waiver

We begin with Phillipsen's waiver argument. As noted by Phillipsen, Civil Code section 1691 requires prompt notice on the part of the party seeking rescission. The courts have interpreted this provision as a safeguard against laches. (See, e.g., *Wilke v. Coinway, Inc*. (1967) 257 Cal.App.2d 126, 140.) The test for its application is whether the delay has substantially prejudiced the other party. (Civ. Code, § 1693; *Saret-Cook v. Gilbert, Kelly, Crowley & Jennett* (1999) 74 Cal.App.4th 1211, 1227.) Phillipsen contends that Lopez never provided notice to her to rescind the contract. Phillipsen also contends that rescinding the agreement would be unduly burdensome on her because, since the court issued its writ of possession in 2005, she has paid off the liens and encumbrances, refinanced the property, incurred additional costs for cleaning and remodeling, and has made the property her residence.

The problem with Phillipsen's argument, however, is that she minimizes Lopez's efforts immediately after discovering the tax lien. On October 5, 2004, Lopez obtained

preapproval for a loan to fulfill his part of the settlement agreement, which he understood would involve paying off the first deed of trust on the property and giving Phillipsen an additional $45,000. After noticing Phillipsen's $12,782.77 personal tax lien on the preliminary title report, Lopez informed his attorney, who in turn contacted Phillipsen's attorney. On October 3, 2004, the paralegal for Lopez's attorney, Joel Goldberg, faxed a copy of the preliminary title report to Phillipsen's attorney, Joseph Lamantia, and advised him of "this hiccup to the settlement agreement." Goldberg reported that, "[i]n a telephone conversation with Mr. Lamintia [*sic*] that same day he agreed that Mrs. Phillipsen would be responsible for payment of this tax lien." On December 2, 2004, Lamantia informed Goldberg that he was no longer representing Phillipsen. Apparently, Phillipson had signed a substitution of counsel form, but the form was incomplete.

The record shows that Phillipsen was aware that Lopez expected her to pay her personal tax lien before conveying clear title to the property. While Lopez may not have sent her a letter stating explicitly that he wanted to rescind the contract, Phillipsen, through her attorney of record, undeniably had actual notice of this problem with the settlement agreement. Phillipsen cannot assert that she had no knowledge of the information given to Lamantia. (See *Stalberg v. Western Title Ins. Co*. (1991) 230 Cal.App.3d 1223, 1231 [an attorney's knowledge generally is imputed to his client].) Based on the facts in the record, Phillipsen has failed to show that she was left in the dark while Lopez sat on his rights.

Furthermore, as noted by Lopez, contrary to Phillipsen's claim that she has made investments in the property, the record shows that Phillipsen has profited by keeping the

property. Phillipsen specifically claimed that she paid off the liens and encumbrances, refinanced the property, took possession, and made improvements. The only substantial liens and encumbrances on the property, however, were the original deed of trust for $60,000 and Phillipsen's personal tax lien of $12,792.77. According to her declaration, Phillipsen paid these liens and refinanced the property with a new loan in the amount of $161,000, $100,000 more than necessary to pay off the original deed. This evidence shows that she has been enriched—possibly, unjustly—by her continued ownership and possession of the property, and any change in her position from rescinding the contract would be no different than the change imposed upon Lopez and his family.

We conclude that Lopez did not waive his right to seek rescission.

2. Mutual Mistake of Fact

Lopez claims that the contract was void because there was a mutual mistake of fact. He argues that neither party expected Lopez to pay Phillipsen's tax lien as part of the settlement agreement. Phillipsen responds that there was no mistake because Lopez had constructive or actual notice of the tax lien before he signed the agreement. Phillipsen specifically argues that Lopez had constructive notice of the tax lien because it was duly filed by the Franchise Tax Board on February 18, 2004. Phillipsen also argues that Lopez had actual notice of the tax lien because he had a copy of the preliminary title report on October 13, 2004, the day before he signed the settlement agreement.

In his reply brief, Lopez contends that, if he is held responsible for having constructive notice of the tax lien, then the same should apply to Phillipsen. Phillipsen, then, had constructive notice of the tax lien, but failed to disclose it during their

negotiations. Moreover, Phillipsen likely received actual notice directly from the Franchise Tax Board, which ordinarily notifies the taxpayer before recording a tax lien, and the county recorder, who also notifies the property owner of any involuntarily liens recorded on the property. If Phillipsen knew about the tax lien, the ground for challenging the settlement agreement would be unilateral mistake or fraud, not mutual mistake.

Before discussing any alternative grounds, we will address Phillipsen's argument that there was no mutual mistake because Lopez had constructive or actual notice of the tax lien.

As stated above, the party seeking to rescind the contract must show that the mutual mistake was material to the contract and the mistake was not caused by the neglect of a legal duty. (Civ. Code, § 1577; see also *White v. Berrenda Mesa Water Dist., supra,* 7 Cal.App.3d at pp. 900-901.) Within this framework of analysis, Phillipsen appears to be arguing that Lopez neglected his duty to discover the tax lien.

The negligence required under Civil Code section 1577, however, does not involve ordinary negligence. "It is settled that, even in the absence of any misrepresentation, the negligent failure of a party to know or discover facts as to which both parties are under a mistake does not preclude rescission or reformation because of the mistake. [Citations.]" (*Van Meter v. Bent Construction Co.* (1956) 46 Cal.2d 588, 594 [failure to examine terms of the contract]; see also *M. F. Kemper Const. Co. v. City of L. A., supra,* 37 Cal.2d at p. 702 [negligent in calculating the bid]; *Nat. Auto. & Cas. Co. v. Ind. Acc. Com.* (1949) 34 Cal.2d 20, 26 [failure to read policy].) This is

particularly true when the party seeking to rescind the contract relied on the other party's false representations, whether intentional or not. (*Van Meter v. Bent Construction Co., supra,* at p. 595.) "A defendant who misrepresents the facts and induces the plaintiff to rely on his statements should not be heard in an equitable action to assert that the reliance was negligent unless plaintiff's conduct, in the light of his intelligence and information, is preposterous or irrational. [Citation.]" (*Ibid.*; see also *Balistreri v. Nevada Livestock Production Credit Assn., supra,* 214 Cal.App.3d at pp. 643-644; *Architects & Contractors Estimating Services, Inc. v. Smith* (1985) 164 Cal.App.3d 1001, 1008.)

Even if we assume that there was no misrepresentation, Lopez's failure to discover the tax lien would not have constituted neglect of a legal duty under Civil Code section 1577. As stated above, something more is required than ordinary negligence. "There is an element of carelessness in nearly every case of mistake, and it is obvious that the unqualified application of the principle urged by defendants would result in the virtual destruction of the equitable remedies for relief from mistake." (*Van Meter v. Bent Construction Co., supra,* 46 Cal.2d at p. 594; see also *Hess v. Ford Motor Co.* (2002) 27 Cal.4th 516, 529.)

Lopez's failure to discover the recorded lien cannot be described as anything more than ordinary negligence, certainly not "preposterous or irrational." Although the Franchise Tax Board filed the tax lien several months before the parties began their negotiations, Lopez would not have received notice of the lien, being neither the taxpayer nor the property owner of record. Also, while he ordered a title report, he did not receive the report until October 13, 2004. Lopez signed the agreement on October 14, 2004, but

he already had agreed to the terms of the settlement at the mandatory settlement conference on October 8, 2004. He did not examine the report before signing the agreement. While this was negligence, it does not qualify as neglect of a legal duty such that it would bar relief for mistake of fact under Civil Code section 1577.

Lopez, therefore, was able to assert that he was mistaken about the tax lien. If there was no meeting of the minds as to whether Lopez was responsible for paying Phillipsen's $12,782.77 tax lien, then there was no contract. "'If both parties are mistaken, and neither is at fault or both are equally to blame, the mistake may prevent formation of the contract.' [Citation.]" (*Balistreri v. Nevada Livestock Production Credit Assn., supra*, 214 Cal.App.3d at p. 642.) If we accept Phillipsen's claim that she too was ignorant of the tax lien, then there was a mutual mistake of fact. But, as discussed below, Phillipsen's claim is implausible and the mistake involved in this case falls more squarely into the category of a unilateral mistake of fact.

3. Unilateral Mistake

In addition to claiming mutual mistake, Lopez contends that Phillipsen knew about the tax lien and intentionally concealed it from him during their negotiations. Phillipsen argues that, even if Lopez was mistaken about the tax lien, the tax lien did not relate to a basic assumption of the agreement. She also argues that Lopez agreed to bear the risk of any unknown liens and encumbrances.

As mentioned above, there are two ways of showing a unilateral mistake. The California Supreme Court recognized that, in some cases, courts found that a unilateral mistake was sufficient to rescind the contract where the party seeking to rescind the

contract showed that the other party knew of the mistake or caused the mistake, thereby involving something akin to intentional or negligent misrepresentation. (See *Donovan v. RRL Corp., supra,* 26 Cal.4th at p. 282; see also *Conservatorship of O'Connor, supra,* 48 Cal.App.4th at p. 1097.)

Alternatively, the party seeking to rescind the contract also could obtain relief by showing the following facts: (1) the mistake was regarding his basic assumption in making the contract; (2) the mistake had a material affect on the agreed exchange of performances adverse to him; (3) the party did not bear the risk of the mistake; and (4) that it would be unconscionable to enforce the contract. (See *Donovan v. RRL Corp., supra,* 26 Cal.4th at p. 282.)

In this case, under either approach, the court should have found a unilateral mistake. The facts in this case show that, while Lopez agreed to pay off the existing loans and encumbrances, he should not have been held responsible for Phillipsen's personal tax lien, because she failed to disclose it during their settlement negotiations.

In challenging this conclusion, Phillipsen argues that the mistake did not relate to a basic assumption of the agreement. Phillipsen likens this case to other cases involving purchase agreements where the buyers later discover that the quality or value of the item purchased fell below their expectations. (See, e.g., *Wood v. Boynton* (1885) 64 Wis. 265 [25 N.W. 42, 44].) Phillipsen argues that Lopez's mistake likewise had to do with value, as opposed to the nature of the property.

This distinction between nature and value is entirely inapposite, not to mention, unhelpful. Phillipsen appears to confuse the basic assumption of the contract with the

nature of the thing for which the contract is made. Furthermore, the cases cited by Phillipsen were decided primarily on other grounds, including whether there was a warranty, fraud, or mutual mistake. (See, e.g., *Smith v. Zimbalist* (1934) 2 Cal.App.2d 324, 332-333 [existence of an implied warranty]; *Wood v. Boynton, supra*, 25 N.W. at p. 44 [absence of fraud or mistake].) Such grounds for invalidating a contract, however, are not relevant to determining if the mistake had to do with a basic assumption of the agreement in the first instance.

Both the requirement that the mistake relate to a basic assumption of the agreement and the requirement that the mistake has a material effect on the agreed exchange of performances are directed at the question of materiality. In order to justify the remedy of rescission for a unilateral mistake, the party seeking to rescind the contract must show, at minimum, the mistake concerned his or her basic assumptions in making the contract and substantially affected the parties' obligations under their agreement.

The basic assumption requirement, therefore, involves a simpler question: Did Lopez's mistaken belief about the liens and encumbrances on the property relate to his basic assumptions in making the contract? The answer is yes. As a critical component of the parties' agreement, the parties' understanding of their obligations concerning the liens and encumbrances were basic assumptions held by the parties in accepting the settlement agreement. Before the parties executed the settlement agreement, they negotiated on the terms of the agreement. Lopez eventually agreed to pay both a set amount to Phillipsen and an unspecified amount for the liens and encumbrances on the property. Although the amount required to pay off the liens and encumbrances was unspecified, Lopez assumed

that he had been informed of all existing liens and encumbrances. Because he had been paying the mortgage, taxes, and insurance on the property for years, Lopez entered the agreement, knowing that he was current on his payments.

Although Phillipsen also argues that Lopez bore the risk of paying her tax lien, the facts and the law fail to support her claim. Phillipsen maintained that she did not have knowledge of the tax lien, but she admitted that she was aware of her tax liability. In order to accept Phillipsen's statement that she was unaware of the tax lien, the court must have assumed that the Franchise Tax Board failed to give her notice, contrary to its ordinary practice as mandated by statute. Even if the court had some basis for accepting Phillipsen's claim, Phillipsen provided no excuse for failing to disclose her tax liability, which would have been material to the parties' negotiation.

Revenue and Taxation Code section 19221, subdivision (a) provides that, "If any taxpayer or person fails to pay any liability imposed . . . at the time that it becomes due and payable, the amount thereof . . . shall thereupon be a perfected and enforceable state tax lien." Revenue and Taxation Code section 19225, subdivision (a)(1) further provides that, "[t]he Franchise Tax Board shall notify in writing the person described in Section 19221 of the filing or recording of a notice of state tax lien . . . ." As noted in Phillipsen's declaration, the Franchise Tax Board recorded a state tax lien on her property on February 18, 2004, several months before the parties entered the settlement agreement. Based on the law and the facts, the logical conclusion is that Phillipsen received written notice of the state tax lien. In her motion to enforce the settlement, however, Phillipsen maintained that she "had no actual knowledge of the tax lien at the

time the parties executed the Agreement in October." Albeit not under oath, this statement cannot be true unless the Franchise Tax Board somehow was derelict in performing its statutory duties.

A brief survey of the related law also reveals the Legislature's reluctance to impose liability for state tax liens against third parties, particularly bona fide purchasers of real property. Government Code section 7170, subdivision (b) provides: "A state tax lien is not valid as to real property against the right, title, or interest of any of the following persons where the person's right, title, or interest was acquired or perfected prior to recording of the notice of state tax lien in the office of the county recorder . . . ." The list of persons includes "[a] successor in interest of the taxpayer without knowledge of the lien." (Gov. Code, § 7170, subd. (b)(1); see also Code of Civ. Proc., § 688.030, subd. (a)(2).) While this provision does not apply to Lopez because the tax lien was recorded before he acquired a right to the property under the settlement agreement, it nonetheless demonstrates the Legislative intent to protect unsuspecting purchasers.

Although Lopez agreed to pay off all existing liens and encumbrances, he was mistaken as to the facts concerning what liens were recorded against the property. And, although Lopez should have inspected the title report before signing the agreement, this oversight, as discussed above, did not amount to a neglect of a legal duty, which would preclude the finding of a mistake of fact under Civil Code section 1577. (See *Donovan v. RRL Corp., supra,* 26 Cal.4th at p. 283.)

The law and the facts show that Phillipsen had notice of the state tax lien and that she failed to disclose it during the parties' negotiations, thereby causing Lopez to assume

that there were no substantial liens or encumbrances on the property. Lopez may have agreed to bear the risk as to any unknown liens and encumbrances, but Phillipsen's nondisclosure increased the risk beyond what Lopez agreed to assume. (See *Lingsch v. Savage* (1963) 213 Cal.App.2d 729, 735.) Under the facts in this case, it would have been unconscionable to require Lopez to pay Phillipsen's personal tax lien of $12,782.77 before proceeding with the sale.

We conclude that the trial court erred in granting Phillipsen's motion to enforce the settlement. The court should have found that the settlement agreement was void on the basis of unilateral mistake and then ordered other appropriate equitable relief.

## Disposition

We reverse the judgment. Lopez shall recover his costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

s/Ramirez
P.J.

We concur:

s/McKinster
J.

s/Richli
J.